

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to driver's licenses for undercover law enforcement officers

The Transportation Department hereby amends Chapter 625, "Driver's Licenses for Undercover Law Enforcement Officers," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.189A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.189 and 321.189A.

Purpose and Summary

These amendments add the provision that an applicant who is employed by a state or local law enforcement agency that is located outside Iowa is ineligible for an undercover Iowa driver's license. These officers typically have no jurisdictional authority to conduct official activity in Iowa and may seek to obtain an undercover driver's license from their state of domicile. However, federal law enforcement officers remain eligible to obtain undercover driver's licenses as provided in Iowa Code section 321.189A(2).

In addition, these amendments update terminology from "disapprove" to "deny" in relation to application processing, clarify that the Bureau of Investigation and Identity Protection is responsible for collecting and canceling surrendered driver's licenses, and update the chapter's implementation sentence to add Iowa Code section 321.189, which is the statute that prescribes the content of all driver's licenses issued by the Department.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 30, 2022, as **ARC 6703C**.

The Department received comments from one person. The commenter expressed concerns that the Department's current practice of issuing undercover driver's licenses in compliance with Iowa Code section 321.189A is noncompliant with federal REAL ID regulations pursuant to 6 CFR Part 37 and also noncompliant with federal and state laws limiting a person to possession of only one driver's license or ID card at a time. The commenter also questioned whether the amendments violate federal and state laws and regulations.

The Department's response identified the federal REAL ID regulation that expressly permits state driver's license agencies to issue undercover driver's license to law enforcement officials and clarified how the Department's existing practices and rules maintain compliance with the "one license" and "one REAL ID" requirements of federal and state laws.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on January 11, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 15, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—625.2(321) as follows:

761—625.2(321) Application.

625.2(1) to **625.2(3)** No change.

625.2(4) The department shall approve or ~~disapprove~~ deny the application, based on the results of the investigation and the determination of necessity.

625.2(5) An applicant employed by a state or local law enforcement agency that is located in a state other than Iowa is not eligible for an undercover driver's license issued under this chapter.

ITEM 2. Amend rule 761—625.5(321) as follows:

761—625.5(321) Cancellation. When the need for an undercover license no longer exists or if the licensee ceases to be employed by the sponsoring law enforcement agency, the licensee shall surrender the undercover license to the ~~department~~ bureau of investigation and identity protection for cancellation.

ITEM 3. Amend **761—Chapter 625**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 22.7, 80G.3, 321.189, 321.189A, and 321.196 and 6 CFR Part 37.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/23.